



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack
Commissioner



July 30, 2010

Curtis Spalding
Administrator - EPA Region 1
5 Post Office Square, Mail Code: ORA01-4
Boston, MA 02109-3912

**Re: Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG)
Tailoring Rule
NHDES Implementation of Final Rule**

Dear Mr. Spalding:

On June 3, 2010 (FR 75 31514), the United States Environmental Protection Agency (EPA) published a final rule effective August 2, 2010 tailoring the applicability criteria that determine which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD and title V programs of the Clean Air Act (CAA).

As part of the final rulemaking, EPA requested that states submit information to the appropriate EPA Regional Administrator by August 2, 2010 so that it may determine whether it is still necessary to finalize any proposed limited approvals for any State Implementation Plan (SIP)-approved PSD and part 70 title V state programs. In this letter, EPA requested that states explain whether they will apply the meaning of the term "subject to regulation" established by EPA in this action in implementing both their PSD and title V permitting programs, and if so, whether the state intends to do so without undertaking a regulatory or legislative process. If a state must revise its statutes or regulations to implement this rule, EPA asked that states provide an estimate of the time to adopt final rules in its letter to the Regional Administrator. The purpose of this letter is to address the questions posed by EPA as requested in the final rulemaking.

New Hampshire currently has SIP-approved PSD and title V programs. With a few exceptions (such as public participation requirements), the New Hampshire PSD program largely incorporates by reference EPA's PSD program requirements (contained in 40 CFR 52.21) that were in place at the time the New Hampshire PSD program was approved in 2002 (see October 28, 2002 Vol. 67 FR 65710, *Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Prevention of Significant Deterioration (PSD) of Air Quality Permit Requirements*). Aside from where the phrase is contained in the definition of "Best Available Control Technology" in New Hampshire Administrative Rule Env-A 101.31, New Hampshire does not use the term "subject to regulation" in its state rules for the PSD program; however, the New Hampshire PSD program references sections of 40 CFR 52.21 that use the term "subject to regulation". The situation is similar for New Hampshire's title V program in that it does not use

the term “subject to regulation” in the state rules but the program incorporates sections of the EPA’s title V regulations that include this term.

The New Hampshire Department of Environmental Services, Air Resources Division (NHDES) has reviewed the discussion provided by EPA on its interpretation of the term “subject to regulation” in the recent Interpretive Memo notice (75 FR 17004, April 2, 2010). In this notice, EPA reiterated its longstanding interpretation that a pollutant, such as a GHG, is “subject to regulation” when it is subject to a CAA requirement establishing actual control of emissions. In the context of GHG permitting under the PSD and title V programs, this means that the requirements of the final rule for GHGs would not go into effect until January 2, 2011. NHDES concurs with EPA’s interpretation of the term “subject to regulation” and intends to implement GHG permitting under PSD and title V beginning on January 2, 2011.

Notwithstanding the above, NHDES determined that it is necessary to make changes to its state rules to clarify the thresholds for permitting GHGs. Currently, the PSD major source threshold is either 100 or 250 tons per year (tpy), depending on the source category. For title V, the major source threshold is 100 tpy. Furthermore, for major modifications under the PSD program, unless a significant increase threshold is established for a specific regulated pollutant, *any* increase in GHG emissions would trigger the major modification requirements under PSD. As EPA noted in the final rule for GHGs, if it applied the current statutory PSD and title V applicability thresholds literally to sources of GHG emissions, it would bring tens of thousands of small sources and modifications into the PSD program each year, and millions of small sources into the title V program. Unless the state rules are modified to establish separate thresholds for GHGs, NHDES would not be able to effectively administer the SIP-approved PSD and title V programs.

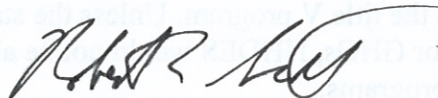
In order to address the above concerns, NHDES plans to establish new definitions for “carbon dioxide equivalent emissions” (CO₂e) and “greenhouse gases” in Env-A 101, *Definitions*. These definitions will be essentially identical to the definitions established by EPA in its June 3, 2010 final rule for GHGs. In addition, NHDES is proposing changes to the definitions of “major source”, “major stationary source”, and “significant” where they are currently defined in Env-A 101 and Env-A 600 of the state rules. Specifically, NHDES is revising these definitions to clarify that, for purposes of GHG permitting, the major source threshold for PSD and title V is 100,000 tpy CO₂e and the major modification threshold under the PSD program is a net emissions increase of 75,000 tpy CO₂e. NHDES is confident that these changes will in place by the January 2, 2011 date for implementation of GHG permitting in New Hampshire.

NHDES has initiated the required rulemaking process and expects to complete the process in December 2010, with an effective date of January 2, 2011 for these rule changes. A detailed breakdown of the anticipated rulemaking schedule is provided below.

| Required State Rulemaking Action | Anticipated Completion Date |
|--|-----------------------------|
| Internal legal review | July 2010 |
| Presentation of proposed rules to NH Air Resources Council (NHARC) – initiates a 15-day review period by NHARC | August 16, 2010 |
| Filing of Fiscal Impact Statement Request | September 1, 2010 |
| Filing of Rulemaking Notice | September 10, 2010 |
| Publication of Rulemaking Notice | September 17, 2010 |
| Public hearing on proposed rules | October 22, 2010 |
| Close of public comment period | November 1, 2010 |
| Final proposed rule filed | December 2, 2010 |
| Final approval by Joint Legislative Committee on Administrative Rules (with January 2, 2011 effective date) | December 16, 2010 |

NHDES believes that the above discussion and proposed actions satisfy EPA's information request as contained in its June 3, 2010 final rule. We look forward to working with your staff in the coming months on this important issue. If you or your staff has any questions regarding the issues raised in this letter, please contact Gary Milbury, Air Permit Programs Manager, at 603-271-2630 or via email at gary.milbury@des.nh.gov.

Sincerely,



Robert R. Scott
Director
Air Resources Division

rrs/gdm

cc: D. Dahl, EPA Region 1